

AMENDED IN SENATE JUNE 2, 2015

AMENDED IN SENATE APRIL 30, 2015

SENATE BILL

No. 507

Introduced by Senator Pavley

February 26, 2015

An act to amend Section 6603 of the Welfare and Institutions Code, relating to sexually violent predators.

LEGISLATIVE COUNSEL'S DIGEST

SB 507, as amended, Pavley. Sexually violent predators.

Existing law provides for the civil commitment of criminal offenders who have been determined to be sexually violent predators for treatment in a secure state hospital facility. Under existing law, persons to be evaluated for civil commitment are evaluated by 2 practicing psychiatrists or psychologists designated by the Director of State Hospitals. If both evaluators concur that the person is likely to engage in acts of sexual violence without appropriate treatment and custody, the director is required to forward a request for a petition for commitment to the district attorney or county counsel, who may then file the petition with the court.

Under existing law, ~~if one or more of the original evaluators is no longer available to testify for the petitioner in court proceedings, if the attorney petitioning for commitment determines that updated evaluations are necessary in order to properly present the case for commitment,~~ the attorney ~~petitioning for commitment~~ may request the department to perform ~~replacement evaluations. These replacement evaluations~~ *updated evaluations, which* include the review of available medical and psychological records, including treatment records, consultation with current treating clinicians, and interviews of the person being evaluated.

Existing law requires that the department forward the ~~replacement~~ *updated* evaluations to the petitioning attorney and to the counsel for the person who is the subject of the commitment hearing.

This bill would require the evaluator performing an updated evaluation to include a statement listing the medical and psychological records reviewed by the evaluator, and would direct the court to issue a subpoena, upon the request of either party to the civil commitment proceeding, for a certified copy of these records. *The bill would authorize either party to move to quash the subpoena, in whole or in part, on the ground that a record or portion of a record is not likely to lead to the discovery of admissible evidence regarding whether the person is a sexually violent predator.* The bill would authorize the attorneys to use the records in the commitment proceeding, but would prohibit disclosure of the records for any other purpose. The bill would also prohibit the attorney petitioning for commitment from providing access to these records to any 3rd party, including an expert retained or sought to be retained by that attorney, without the consent of the court upon noticed motion.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6603 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 6603. (a) A person subject to this article shall be entitled to a
- 4 trial by jury, to the assistance of counsel, to the right to retain
- 5 experts or professional persons to perform an examination on his
- 6 or her behalf, and to have access to all relevant medical and
- 7 psychological records and reports. In the case of a person who is
- 8 indigent, the court shall appoint counsel to assist him or her, and,
- 9 upon the person's request, assist the person in obtaining an expert
- 10 or professional person to perform an examination or participate in
- 11 the trial on the person's behalf. Any right that may exist under this
- 12 section to request DNA testing on prior cases shall be made in
- 13 conformity with Section 1405 of the Penal Code.
- 14 (b) The attorney petitioning for commitment under this article
- 15 shall have the right to demand that the trial be before a jury.
- 16 (c) (1) If the attorney petitioning for commitment under this
- 17 article determines that updated evaluations are necessary in order

1 to properly present the case for commitment, the attorney may
2 request the State Department of State Hospitals to perform updated
3 evaluations. If one or more of the original evaluators is no longer
4 available to testify for the petitioner in court proceedings, the
5 attorney petitioning for commitment under this article may request
6 the State Department of State Hospitals to perform replacement
7 evaluations. When a request is made for updated or replacement
8 evaluations, the State Department of State Hospitals shall perform
9 the requested evaluations and forward them to the petitioning
10 attorney and to the counsel for the person subject to this article.
11 However, updated or replacement evaluations shall not be
12 performed except as necessary to update one or more of the original
13 evaluations or to replace the evaluation of an evaluator who is no
14 longer available to testify for the petitioner in court proceedings.
15 These updated or replacement evaluations shall include review of
16 available medical and psychological records, including treatment
17 records, consultation with current treating clinicians, and interviews
18 of the person being evaluated, either voluntarily or by court order.
19 If an updated or replacement evaluation results in a split opinion
20 as to whether the person subject to this article meets the criteria
21 for commitment, the State Department of State Hospitals shall
22 conduct two additional evaluations in accordance with subdivision
23 (f) of Section 6601.

24 (2) For purposes of this subdivision, “no longer available to
25 testify for the petitioner in court proceedings” means that the
26 evaluator is no longer authorized by the Director of State Hospitals
27 to perform evaluations regarding sexually violent predators as a
28 result of any of the following:

29 (A) The evaluator has failed to adhere to the protocol of the
30 State Department of State Hospitals.

31 (B) The evaluator’s license has been suspended or revoked.

32 (C) The evaluator is unavailable pursuant to Section 240 of the
33 Evidence Code.

34 (D) The independent professional or state employee who has
35 served as the evaluator has resigned or retired and has not entered
36 into a new contract to continue as an evaluator in the case, unless
37 this evaluator, in his or her most recent evaluation of the person
38 subject to this article, opined that the person subject to this article
39 does not meet the criteria for commitment.

1 (d) ~~Nothing in this section shall~~ *This section does not prevent*
2 the defense from presenting otherwise relevant and admissible
3 evidence.

4 (e) If the person subject to this article or the petitioning attorney
5 does not demand a jury trial, the trial shall be before the court
6 without a jury.

7 (f) A unanimous verdict shall be required in any jury trial.

8 (g) The court shall notify the State Department of State Hospitals
9 of the outcome of the trial by forwarding to the department a copy
10 of the minute order of the court within 72 hours of the decision.

11 (h) ~~Nothing in this section shall~~ *This section does not limit any*
12 legal or equitable right that a person may have to request DNA
13 testing.

14 (i) ~~Nothing in subparagraph~~ *Subparagraph (D) of paragraph*
15 ~~(2) of subdivision (c) shall be construed to~~ *does not affect the*
16 authority of the State Department of State Hospitals to conduct
17 two additional evaluations when an updated or replacement
18 evaluation results in a split opinion.

19 (j) (1) Notwithstanding any other ~~law~~ *law*, the evaluator
20 performing an updated evaluation shall include with the evaluation
21 a statement listing all records reviewed by the evaluator pursuant
22 to subdivision (c). The court shall issue a subpoena, upon the
23 request of either party, for a certified copy of these records. The
24 records shall be provided to the attorney petitioning for
25 commitment and the counsel for the person subject to this article.
26 The attorneys may use the records in proceedings under this article
27 and shall not disclose them for any other purpose.

28 (2) *Either party may move to quash the subpoena, in whole or*
29 *in part, on the ground that a record or portion of a record is not*
30 *likely to lead to the discovery of admissible evidence regarding*
31 *whether the person subject to this article is a sexually violent*
32 *predator, as defined in subdivision (a) of Section 6600. If the*
33 *motion to quash is granted, in whole or in part, the record or*
34 *records shall retain any confidentiality that may apply under*
35 *Section 5328 of this code and Section 1014 of the Evidence Code.*

36 ~~(2)~~

37 (3) This subdivision does not affect any right of a party to object
38 to the introduction of evidence that is more prejudicial than
39 probative.

40 ~~(3)~~

1 (4) This subdivision does not create any new rights or limitations
2 regarding the retention of an expert witness by either party or
3 access to records by an expert retained or sought to be retained by
4 either party. The attorney petitioning for commitment shall not
5 provide access to the records obtained under paragraph (1) to any
6 third party, including an expert retained or sought to be retained
7 by that attorney, without the consent of the court upon noticed
8 motion.

9 ~~(4)~~

10 (5) This subdivision does not affect any right of a party to seek
11 to obtain other records regarding the person subject to this article.

12 ~~(5)~~

13 (6) Except as provided in paragraph (1), this subdivision does
14 not affect any right of a committed person to assert that records
15 are confidential under Section 5328 of this code or Section 1014
16 of the Evidence Code.

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